AN INTER-STATE MARITIME TERRITORIAL CONFLICT: A STUDY ON MALAYSIA'S CONFLICT RESOLUTION THROUGH PEACEFUL MEANS

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ABSTRACT. Inter-state maritime territorial disputes have always long been amongst contentious issues among the littoral states in the ASEAN region. Failure to judicially manage such disputes may lead to uncertainty-creating the possibilities of escalating into open inter-state war. Without border settlement, claimant states have to spend substantially for military and security resources to protect their interests in the contested maritime areas, rather than developing the economic resources of the areas. Any armed conflict not only costs human life but also adversely affects maritime enforcement cooperation and diplomatic relations of the claimant states, and the overall economic growth in the region. Thus, Malaysia taking into account on the adverse impact of unresolved maritime disputes, has successfully and peacefully resolved several of its maritime territorial disputes with its neighboring States, albeit some of the ongoing unresolved territorial disputes (e.g. Pedra Branca island and Spratly islands). These resolutions are achieved either through diplomatic channel or by mutual agreement with other claimant State to refer the dispute to the International Court of Justice for adjudication. Therefore, the paper's general purpose is to review Malaysia's conflict resolution through its peaceful approach in resolving the country's various inter-state maritime territorial disputes. Specifically, the paper will analyze the diplomatic, legal and other peaceful approaches utilized by the Malaysian government to resolve these disputes, particularly involving its neighboring states, Singapore, Indonesia and Thailand.

Keywords: maritime territorial dispute, Malaysia's conflict resolution, conflict management, joint development, diplomatic negotiation and adjudication.

ABSTRAK. Persengketaan teritorial kelautan antarnegara telah lama dan selalu menjadi salah satu pokok persoalan di antara negara-negara berpesisir pantai di kawasan ASEAN. Kegagalan membenahi secara hukum persengketaan semacam itu dapat mengarah pada kemungkinan peningkatan menjadi perang terbuka antar-negara. Alih-alih mengembangkan sumber daya ekonomi di daerah yang dipersengketakan, tanpa penyelesaian perbatasan, negara penuntut harus mengeluarkan dana untuk militer dan keamanan untuk melindungi kepentingannya di daerah tersebut. Setiap konflik bersenjata tidak hanya mengorbankan jiwa tetapi juga berpengaruh secara merugikan pada kerjasama kelautan dan kerjasama diplomatik di antara negara penuntut dan pada pertumbuhan ekonomi secara menyeluruh di kawasan tersebut. Dengan memperhitungkan dampak yang merugikan dari perselisihan kelautan yang tidak

terpecahkan, Malaysia telah menyelesaikan beberapa perselisihan wilayah kelautannya secara sukses dan damai dengan negara-negara tetangganya walaupun masih ada beberapa perselisihan territorial yang masih berlangsung dan belum bisa diselesaikan (misalnya Pulau Pedra Branca dan Kepulauan Spratly). Penyelesaian persengketaan tersebut dicapai melalui saluran diplomatik atau kesepakatan yang saling menguntungkan dengan negara penuntut yang lain dengan merujuk pada mahkamah internasional (International Court of Justice) untuk meminta kepastian hukum. Berkaitan dengan itu, tujuan dari artikel ini adalah mengkaji-ulang penyelesaian konflik Malaysia dalam menyelesaikan berbagai persengketaan teritorial laut antar-negara dengan pendekatan damainya. Secara khusus, artikel ini akan menganalisis pendekatan-pendekatan diplomatik, legal dan damai yang digunakan oleh pemerintah Malaysia untuk menyelesaikan persengketaan-persengketaan ini, terutama yang melibatkan negara-negara tetangga, yaitu Singapura, Indonesia dan Thailand.

Kata Kunci: Persengketaan teritorial laut, manajemen konflik, penyelesaian konflik Malaysia, pembangunan bersama, negosiasi diplomatik dan *adjudication*

INTRODUCTION

Inter-state maritime territorial disputes have always long been contentious issues among the littoral states in the ASEAN region. Undeniably, maritime boundary disputes in the adjacent and opposite seas, and overlapping claims over the shared marine resources must be managed properly among the concerned states. Without settlement, claimant States rather than developing the economic resources of the disputed areas would spend substantial amount of their financial resources for military expenditure and for exercising their claims over the disputed areas. The ongoing overlapping dispute over the Spratly Island groups exemplified the above scenario where the claimant States (e.g. China, Malaysia, Taiwan, the Philippines and Vietnam) have asserted their claims by stationing their respective military forces in numerous islands, islets, shoals, atolls, reefs, and other marine features. Additionally, the current delimitation problems in the Straits of Malacca and Singapore may become another source of future conflicts among the littoral States bordering the Straits.

To avoid any escalation of the situation into violent conflicts, Malaysia must handle its maritime territorial disputes with its neighbors delicately and peacefully. Being one the major maritime nations among the ASEAN members, any escalation of armed conflict with its neighbors would inherently jeopardize its socio-economic and national security interests. Indeed, approximately 90% of its imported and exported goods are carried by seaborne transportation, while the seas are vital in generating and facilitating the country's socio-economic sectors ranging from offshore oil and gas-mining industry, eco-marine tourism to fishing

industry.[1] At the same time, armed conflict between ASEAN members may undermine the overall stability and peace in the region. Therefore, taking into account on the adverse impacts of unresolved maritime disputes, the country has successfully and peacefully resolved some of its maritime disputes with the neighboring States, albeit some of its ongoing disputes such as with Singapore over the ownership of Pedra Branca island, and with Indonesia and the Philippines over the unsettled common maritime boundary limits in the Sulawesi and Sulu Seas.

RESEARCH OBJECTIVE

The general aim of this paper is to review Malaysia's peaceful efforts at conflict resolution through diplomatic and legal approaches in managing the country's maritime territorial disputes with its neighboring states. The paper is divided into two parts. The first part of the paper will briefly identify the potential implications resulted from unresolved maritime territorial disputes, particularly in the ASEAN region. These two major impacts are:

i. Impediment to economic and diplomatic relations
ii. Barrier to effective joint maritime surveillance and enforcement cooperation

The second part of the paper will analyze and discuss what are the diplomatic, legal and other approaches utilized by the Malaysian government to resolve its maritime disputes with its ASEAN neighbors, namely Singapore, Indonesia, Thailand, and Vietnam. These approaches are:

i. Negotiations
ii. Joint Development of the Disputed Marine Resources and Areas
iii. Adjudication process through International Court of Justice (ICJ) and other dispute settlement bodies as provided by the 1982 Law of the Sea Convention. (1992 LOSC)

The paper will also discuss what are the three common characteristics shared by the above approaches that contributed to the dispute settlements.

Impacts of the Maritime Territorial Disputes

The disputes over maritime boundaries between opposite and adjacent coastal States in the ASEAN region can potentially impede and destabilize economic and diplomatic relations between the relevant disputing parties. Consequently, in the absent of settlement, parties involved in maritime territorial disputes have the option to reconsider their close bilateral trade and diplomatic relations with other contending party; and to certain extreme, they may be forced

[1] For further discussion on the importance of sea to Malaysia's economic growth, see A.H. Saharuddin. (2001). 'National Ocean Policy: New Opportunities for Malaysian Ocean Development', *Marine Policy*, Vol. 25, pp. 427-436.

to severe their diplomatic relations. As far as it can be ascertained, maritime territorial disputes among the ASEAN members has never escalated into an open armed conflict. The nearest case of inter-state military clashes over a maritime territorial dispute in the Southeast Asia was between the Chinese and Vietnamese military forces over the disputed Paracel Islands in the South China Sea in 1974. Even then, Vietnam was not yet an official member of ASEAN until 1995.

Unresolved territorial dispute not only adversely destabilize bilateral relations between the disputing parties, it can also affect regional stability, which involved the region's multilateral states. Even though the potential of transborder armed conflict among the ASEAN members over the unresolved territorial dispute is quite unlikely, any frictions on their relations will still inherently undermine the stability and peace that are currently enjoyed in this region.[2] Despite the fact that the economic well being of the ASEAN states is susceptible to the global international market and economy, the region's security and political stability can also significantly influence their economic progress. Indeed, political stability is this region is vital in providing the necessary confidence that foreign investors needed when considering to continue or to initially set up their investments in this region. It is undeniable that one of the major contributors to the economic prosperity currently enjoyed by the regional States such as Malaysia, Singapore and Thailand derived from the continuous existence of foreign investments in these countries, particularly from the Japanese and American multinational companies (MNCs). Therefore, any settlements of territorial disputes among ASEAN members are beneficial to strengthen bilateral trade economic and diplomatic relation and to provide regional stability and peace.

BARRIER TO EFFECTIVE JOINT MARITIME COOPERATION

Maritime territorial disputes and contested shared marine resources can be a barrier to an effective joint maritime cooperation and coordination between the disputing parties. Undeniably, joint maritime operations between the claimant States are imperative to successfully prevent and suppress the alarming rates of criminal activities at sea such as human and drug trafficking, piracy, smuggling, illegal marine pollution and terrorism in the Southeast Asian waters. Without clearly defined legal jurisdiction over the coastal waters and marine resources, the task of coastal State to enforce its national laws and regulations against illegal immigrants, pirates, drug smugglers, illegal fishing activities and marine polluter is difficult one as it needs cooperation with other coastal States sharing the coastlines, semi-enclosed seas or straits. At present, there are various unclearly defined legal jurisdictions in the regional seas, and some examples of

[2] Kelana and Askandar argued that ASEAN members have the mechanism to settle their disputes in a peaceful manner as accorded in the 1976 Treaty of Amity and Cooperation. See Musafir Kelana and Kamarulzaman Askandar. (2002). *Territorial Conflict Management: The Case of Sipadan And Ligitan,* Paper Presented at the First Southeast Asian Conflict Studies Network Malaysian National Workshops, The Northern Hotel, Penang, 7th – 9th November, p. 8.

such cases occur in the common sea areas shared between Malaysia, Indonesia and the Philippines in the Celebes and Sulu Sea, and the disputed territorial waters and shared boundary line between Singapore and Malaysia, south of Johor Straits.

In the recent years, joint maritime surveillance and enforcement operations between the claimant states' naval forces and relevant maritime enforcement agencies are becoming significantly important to prevent the above-mentioned illegal activities, notably the rising incidents of piracy. Chalk (1998) in his study on contemporary piracy in Southeast Asia argued that the overlapping claims of common maritime boundary and uncertainty over maritime jurisdiction in the region have resulted in the absent of a multilateral maritime enforcement arrangement in which:

> "Pirates have used this gap to their advantages, deliberately fleeing to territorial/archipelagic waters, or to areas of contested jurisdiction, were it is more risky for naval vessels to operate unilaterally". [3]

Despite constant efforts by the individual coastal State to conduct surveillance and enforcement operations in its maritime territory, the diversities of the region's topographical and oceanographic characteristics inhibit effective operations to suppress illegal activities at sea. Relevantly, one of the main factors that contribute to recent increasing of reported piracy incidents in the Straits of Malacca notably in Indonesia waters are due to the pirates' ability to avoid detection by the Indonesian enforcement authority by hiding in numerous secluded offshore islands and deep mangrove swamps scattered along the country's coastlines. Close and friendly relations between the disputing States, therefore, are imperative to establish high degree of joint maritime surveillance and enforcement operations along their common maritime boundary.

It is worth mentioning here that in certain cases, the implication of maritime boundary disputes settlement can also create another undefined jurisdictional maritime area. For instance, the 1969 Agreement between the Government of Malaysia and the Government of Indonesia on the Delimitation of the Continental Shelves between the Two Countries not only delimit seabed boundary between these two states but also created an uncertain coastal jurisdiction in a form of a lens-shaped 240 sq nm maritime area, south of Singapore.[4] Consequently, unscrupulous ships operators frequently used this area to conduct illegal dumping activity of oil wastes and hazardous chemicals. Without immediate maritime boundary settlement between involving adjacent coastal States, Malaysia and

[3] See Peter Chalk. (1998). 'Contemporary Maritime Piracy in Southeast Asia'. *Studies in Conflict and Terrorism*, Vol. 21, January-March, pp. 87- 113.

[4] See Mark J. Valencia. (1991). *Malaysia and The Law of the* Sea: *The Foreign Policy Issues* (Institute for Strategic and International Studies (ISIS) Malaysia, Kuala Lumpur), p. 33

Singapore, the jurisdiction of the area will remain uncertain and thus continue to be the dumping area of oil wastes and other pollutions for shipping operators.

Diplomatic and Peaceful Means

There are various peaceful means of dispute settlement, and the most common are negotiation, enquiry, conciliation, mediation, arbitration, or judicial settlement. Even some of dispute settlement mechanisms are suggested in article 33, paragraph 1 of the United Nations Charter. Parties involved in international disputes, nonetheless, may choose any peaceful means of their own choice to resolve their disputes so long as they are not subjected to any treaty that resorted them to specific settlement procedures. Overall, there are three major mechanisms utilized by Malaysia to settle maritime territorial disputes with its neighbors, namely negotiation, joint development of contested marine resources and areas, and adjudication process through ICJ. It may be noted that Malaysia has yet resorted to any fact-finding and conciliation commission[5] as means of dispute settlement mechanism for its maritime territorial disputes

NEGOTIATION

When states involved in disputes, they normally will first seek settlement through negotiation. In fact, Ziring, Riggs and Plano (2000) noted that 'negotiation among parties to a dispute is older than state system and is the most common method of settlement."[6] Historically, Malaysia has engaged in various levels of negotiations to peacefully resolve its maritime disputes with its neighboring coastal States, namely Indonesia, Vietnam, Singapore and Thailand. Following a series of bilateral and multilateral negotiations, Malaysian government managed to settle its maritime boundary delimitation disputes with its neighbors by means of agreements. Among the agreements concerning delimitation of maritime boundaries are as followed:

i. Agreement between the Government of Malaysia and the Government of Indonesia on the Delimitation of the Continental Shelves between the Two Countries, 27 October 1969;
ii. Treaty between the Republic of Indonesia and Malaysia Relating to the Delimitation of the Territorial Seas of the Two Countries in the Strait of Malacca, signed on 17 March 1970;
iii. Agreement between the Government of the Republic of Indonesia, The Government of Malaysia and the Government of the Kingdom of Thailand

[5] For example, the dispute over continental shelf around Jan Mayen island between Iceland and Norway were settled using conciliation commission. See R. R. Churchill and A. V. Love, *The Law of the Sea* (Manchester University Press, Manchester, 3rd edn 1999); See also *Jan Mayen*, Report of Conciliation Commission (1981) XX International Legal Material (ILM) 797 (1981) 151, 450.

[6] Ziring, L, Riggs, R. and J. Plano. (2000). *The United Nations: International Organization and World Politics*, 3rd edn (Wadsworth: Singapore), p. 211.

Relating to the Delimitation of the Continental Shelf Boundaries in the Northern Part of the Strait of Malacca, signed on 21 December 1971;

iv. Treaty between the Kingdom of Thailand and Malaysia relating to delimitation of the territorial seas of the two countries, signed 24 October 1979;

v. Memorandum of Understanding between the Kingdom of Thailand and Malaysia on the Delimitation of the Continental Shelf Boundary between the two countries in the Gulf of Thailand, signed 24 October 1979

In general, the aforementioned delimitation of maritime boundary agreements shared three major common characteristics during their negotiation process. Firstly, the success and effectiveness of negotiation between the concerned parties significantly based on the status or degree of relationships between the contending parties. When discussing the factors that contributed Malaysia and Thailand willingness to conclude agreements in establishing a bilateral joint development authority for the exploration and exploitation of seabed resources in the their disputed continental shelf boundary in the Gulf of Thailand, Ong (1999) asserted that one of the prerequisites of achieving agreement in a negotiation would almost certainly be friendly bilateral relation between the concerned parties.[7]

Malaysia's relations with its two neighbors (i.e. Indonesia and Thailand) during the time of the negotiation process until their final outcomes were generally friendly. All three states enjoyed good relations in the sense of security, social and trade. In the context of security relation, for instance, Malaysia and its neighbors have good military relation as evident from the bilateral officer exchange program, joint military exercises, and maritime enforcement operations in the shared maritime borders.[8] Malaysia-Indonesia relations were generally cordial relations. Except during the Confrontation era from 1963-1966, Musafir and Askandar (2000) prescribed this cordial relation as "*hubungan abang dan adik*" [9] and its still continue until today. The 1969 agreement concerning delimitation of continental shelf boundary in Strait of Malacca is an early instance of agreement resulting from a series of negotiations, which began when both parties resume their previous cordial relations after the end of confrontation. Moreover, like any other continental shelf boundary agreements in the Southeast Asian region, Kittichaisaree (1987) noted that the 1969 agreement was

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[7] For an in-depth analysis on Thailand-Malaysia joint development regime in the Gulf of Thailand, see David M. Ong, (1999). 'The 1979 and the 1990 Malaysia-Thailand Joint Development Agreements: A Model for International Legal Co-operation in Common Offshore Petroleum Deposits', *International Journal of Marine and Coastal Law*, Vol. 14, No. 2, pp-207-246.

[8] Example of bilateral joint military cooperation is the Malindo Darsasa military exercise conducted between Indonesian and Malaysian armed forces. For further readings on regional security cooperation, see Khoo How San. (2000). 'The Role of Defence/ Military in Regional Security Cooperation: An Interpretation of the ASEAN Practice', *Pointer*, Vol. 26, No. 3, July-September. Retrieved December 24, 2003, from http://www.mindef.gov.sg/safti/pointer/back/journals/2000/Vol263/2.htm

[9] See Kelana and Askandar. (2000). 'Territorial Conflict Management', p. 15.

"concluded between politically friendly governments whose good international relations played a part in enhancing the acceptability or the flexibility of the position of the other side."[10]

The willingness of Malaysia, Indonesia, Singapore and Thailand to peacefully resolve their respective maritime territorial disputes derived from their shared prevailing feelings of goodwill and friendliness, and spirit of cooperation embodied among the ASEAN founding members. The signing of the 1976 Treaty of Amity and Cooperation in Southeast Asia further added the impetus for the ASEAN members to pursue peaceful means to settle their maritime territorial disputes.[11] It is important to note here that having good friendly and cordial relations with other disputing party does not necessary means that maritime dispute settlement can be easily achieved if the dispute correlate with other lingering unresolved territorial disputes such in the case between Malaysia and the Philippines concerning their overlapping territorial sea limit in the Sulu and Celebes Seas. And one of the primarily reasons for the failure of both countries to agree on common territorial sea limit in those seas is due to other outstanding issue concerning the legal status of North Borneo in which the Philippines still claimed.[12]

The second common characteristic of the aforementioned agreements is the varying mutual socio-economic and security benefits derived from these agreements. The trend toward "ocean enclosure movement" began to emerge rapidly in the ASEAN region beginning late 1960's, notably among the major regional coastal States- Indonesia, the Philippines, Thailand, and Malaysia. The implication of claiming various maritime zones in the regional semi-enclosed and enclosed regional seas correlate with numerous overlapping claims in common maritime boundary limit and shared marine resources as Ball (1996) added:

> "Of the 30 or so conflicts points in the region, more than a third involve disputes over islands, continental shelf claims, EEZ boundaries and other offshore issues."[13]

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[10] See Kriangsak Kittichaisaree. (1987). *The Law of the Sea and Maritime Boundary Delimitation in South- East Asia*, (Oxford University Press, Singapore), p. 69.

[11] See article 3 and 4 of the Treaty of Amity and Cooperation in the Southeast Asia, which was by signed on 24 February 1976 in Bali, Indonesia.

[12] The Philippines' application for permission to intervene in the ICJ case on the dispute over the sovereignty of Sipadan and Ligitan islands between Malaysia and Indonesia was due to their concern that the decision of the court on this case will affect the country's outstanding territorial claims to North Borneo. For further legal details of the intervention, see Application for Permission to Intervene by the Government of the Philippines, 13 March 2001, *ICJ Press Release 2001/26* at http://www.lawschool.cornell.edu/library/cijwww/icjwww/ipresscom/ipress2001/ipresscom2001-26_inma_20011019.htm

[13] See Desmond Ball. (1996). 'Maritime Cooperation, CSCAP and the ARF' in Sam Bateman and Stephen Bates (eds). *The Seas Unite: Maritime Cooperation in the Asia Pacific Region*, Canberra Papers on Strategy and Defence No. 118, (Strategic and Defence Studies Centre, Canberra), p. 3.

Moreover, the disputes over the contested waters and continental shelf are exacerbated by the ambiguities, gaps and discrepancies of the legal provisions embodies in the 1982 LOSC.[14]

The primary incentives to extend their respective jurisdictional control were impelled by economic, strategic and national security consideration; and derived from the recognition of the 1958 Geneva Convention on Law of the Sea and the 1982 LOSC on their right to proclaim various maritime zones (e.g. continental shelf, archipelagic waters and 200-nm EEZ). The extensions of territorial sea limit in the Straits of Malacca by Malaysia[15] and Indonesia,[16] for instances, would serve the countries' economic interests to safeguard its nearby rich marine natural resources- fish stocks and petroleum and natural gas deposits- and create more job opportunity in sea-related industry such as offshore petroleum mining, tourism industry and fisheries sector. The extension of newly jurisdictional areas would also provided the countries with the necessary legislative and jurisdictional powers to enforce marine pollution control from the increasing risks of vessel-sourced pollution in the Straits of Malacca. Additionally, Indonesia according to Leifer (1978), has never taken its maritime territory for granted due to "a sense of vulnerability that derived not just from the country's varying geographical and ethnicity, but also from historical experience of foreign colonialism through the use of sea power".[17] Thailand, on the other hand, wanted to expand its already flourishing deep sea fishing industry seaward of the Gulf of Thailand to the adjacent South China Sea.

From the socio-economic context, maritime dispute settlement would enable disputing parties to proceed with the exploration and exploitation of marine resources, living and non-living, in the contested area. Not surprisingly, immediate settlement over the disputed common maritime boundary limits and contested offshore marine resources and continental shelf were the immediate concerns among the leaders of ASEAN states.[1] Agreement on the delimitation of maritime boundary particularly with regards to continental shelf would provide a

[14] Many of the 1982 UNCLOS provisions are still "lacked of clarity to remove all the uncertainties, which exist at present. There are still many *grey areas* with the law of the sea which require negotiation between the interest party." See Sam Bateman. (1994).'Maritime Cooperation and Dialogue' in Dick Sherwood (ed) *Maritime Powers in China Seas: Capabilities and Rational* (Australian Defence Studies Centre, Canberra), p. 144.

[15] Nevertheless, the extension of territorial sea limit from 3-nm to 12-nm was exempted in the Straits of Malacca, the Sulu Sea and the Celebes Sea. The reason is due the existence of narrow width in certain parts of those seas in which 12-nm territorial sea would overlap with other states' territorial sea limit. See Emergency (Essential Powers) Ordinance (Act No. 7) 1969, as amended in 1969.

[16] Indonesian territorial sea was extended from 3 to 12 nm territorial sea in 1960. See Article 1(2), Act No. 4 Concerning Indonesian Waters of 18 February 1960; Law No. 6 of 1996 on the Indonesian Territorial Waters has revised Act No. 4 of 1960, See *State Gazette* (1996), No. 73 and *Additional State Gazette* (1996), No. 3, 647.

[17] For an interesting reading on regimes in the Straits of Malacca and Singapore, see Michael Leifer. (1978). *International Straits of the World: Malacca, Singapore and Indonesia* (Sijthoff & Noordhoff, Alphen aan den Rijn).

clearer jurisdictional and sovereign control in the disputed areas. Both Malaysia and Thailand would like to proceed with its development offshore oil and gas deposit in the contested continental shelf areas in the Gulf of Thailand and in the northern part of the Malacca Straits. This necessitated the immediate settlement of their overlapping continental shelf boundaries in the northern part of the Malacca Straits between the two countries and Indonesia on 21 December 1971.

Protecting national security is another inherent benefits ensuing from the settlement of maritime disputes. The main reason why both Malaysia and Indonesia were willing to resolve their dispute over the delimitation of common territorial sea limit in the Straits of Malacca derived from the their intention to increase their jurisdiction capacities to enforce various national laws and regulations of marine pollution control, fisheries regulation, shipping and navigational safety in this narrow Straits. Another incentive for the coastal States to negotiate agreement to resolve overlapping claims resulting from their concerns on the needs of enforcing stricter laws on marine pollution control due over the increasing risks of vessel-sourced pollution such as oil spills from shipping collision or intentional dumping of oil wastes. Marine pollutions caused harmful affects on the adjacent marine ecosystem and resources and at the same time jeopardize the livelihood of the local fishermen. With increasing maritime traffic density in the adjacent popular sea lanes such the Straits of Malacca, Sunda and Lombok Straits, coastal States feared that unresolved maritime boundary in the contested areas would impede their capacity to enforce effective national laws and regulations concerning on marine pollution due to uncertainty of legal jurisdiction in the contested coastal waters and marine resources.

The third common characteristic of the above-mentioned maritime delimitation agreements is the involvement of only limited number of disputing parties. It is worth noting here that the possibilities of achieving agreements for dispute settlement is much higher if the numbers of disputing parties are lesser. The smaller the number of parties involved in a territorial dispute, the higher the chances of achieving any mutual agreement. Indeed, the probability of resolving bilateral issues is much higher than multilateral issues. For instance, when Indonesia and Malaysia disputed over the delimitation of common territorial sea boundary in the Straits of Malacca beginning the late 1960s, both states felt that a solution by way of bilateral agreement was preferable. Subsequently, after a series of negotiations, both Malaysia and Indonesia concluded an agreement to delimit their common territorial sea boundary in the Straits of Malacca on March 1970. Unlike bilateral issues, multilateral issues particularly concerning overlapping claims to islands, islets and shared marine resources are very complex due to involvement varying interests and agendas of the claimant States, and consequently the dispute is difficult to manage. In the case of Spratly islands disputes, Snyder (1996) asserted that smaller claimant States (e.g. Brunei) were traditionally reluctant to pursue bilateral negotiations with larger states (e.g.

China, Vietnam and Malaysia) for fear that larger states would diplomatically overpower its smaller neighbors.[18]

Besides maritime boundaries delimitation, Malaysia has negotiated and concluded a range of agreements with its neighbors on joint development of contested marine resources and joint submission of territorial dispute to be referred to ICJ for adjudication process. These approaches will be discussed below.

JOINT RESOURCE DEVELOPMENT IN DISPUTED TERRITORY

One of the peaceful approaches taken by Malaysia for its disputes settlement over the contested shared marine resources with its neighbors is through the establishment of bilateral joint resource development arrangement in the contested areas.[19] Following a series of negotiation, Malaysia managed to conclude agreement with Thailand and Vietnam to jointly develop hydrocarbon resources found in the disputed area of overlapping continental shelf claims in the Gulf of Thailand. Some of the agreements are as followed:

i. Memorandum of Understanding between Malaysia and Kingdom of Thailand on the Establishment of Joint Authority for the Exploitation of the Resources in the Seabed in a Defined Area of the Continental Shelf of the Two Countries in the Gulf of Thailand, signed in 1979.
ii. Agreement between the Government of Malaysia and the Government of The Kingdom of Thailand on the Constitution and Other Matters Relating to Establishment of the Malaysia-Thailand Joint Authority, enforced on 30 May 1990.
iii. Memorandum of Understanding between Malaysia and the Socialist Republic of Vietnam for the Exploration and Exploitation of the of Petroleum in a Defined Area of the Continental Shelf Involving the Two Countries, signed in 5 June 1992.

The willingness of the disputing parties to compromise and ultimately achieve agreement is greatly depended upon the inherent economic and political benefits derived from the particular dispute settlement as Anderson (1998) pointed out:

[18] For further readings on the maritime dispute in South China Sea, see Scott Snyder. (1996). *The South China Sea Dispute Prospects for Preventive Diplomacy*. Retrieved December 24, 2003, from http://www.usip.org/pubs/specialreports/early/snyder/South_China_Sea1

[19] Other examples of bilateral joint resource development schemes concerning continental shelf resources include the following: 1974 Agreement between Japan and the Republic of South Korea Concerning Joint Development of the Southern Part of the Continental Shelf Adjacent to the Two Countries; 1974 Agreement Between Sudan and Saudi Arabia Relating to the Joint Exploitation of the Natural Resources of the Sea-bed and Subsoil of the Red Sea in the Common Zone; and 1989 Treaty between Australia and Republic of Indonesia on the Zone of Cooperation in an Area Between Indonesia Province of East Timor and North Australia.

> "The solution of a joint area may be second best to an agreed boundary but a joint area may well be better than seeing a dispute remain unresolved and possibly grow more serious. The governments may prefer a compromise to a defeat in litigation. An effective treaty providing for joint development may allow industry to work an produce benefits for many years in an area which would otherwise have remained blighted by dispute over jurisdiction"[20]

The possibility of bilateral joint development of the disputed shared marine resources either, living and non-living resources will depend very much upon the political will of the concerned parties to resolve their disputes.[21] Since the beginning the late 1970s, both leaders of Thailand and Malaysia realized the growing importance of energy and oil supply for their countries' economic growth and thus the need to speed up the development of the offshore petroleum deposit in the contested areas of the Gulf of Thailand. Recognizing the significant economic benefits development of the contested areas, both states agreed to compromise and set aside their boundary disputes to allow early development of oil and gas resources in the contested area. Similar to the 1989 Timor Gap Treaty between Indonesia and Australia, the 1990 Malaysia-Thailand Joint Development Agreement establishes a very powerful Joint Authority, which assumes the rights and responsibilities of the parties in the described zone of cooperation.[22] In sum, the relevant agreements exemplified the future model for international legal cooperation concerning disputed shared marine resources.

ADJUDICATION THROUGH THE INTERNATIONAL COURT OF JUSTICE (ICJ)

In the recent years, International Court of Justice (ICJ), the principle judicial organ of the United Nations, has played a significant role as a dispute settlement mechanism for the two cases of maritime disputes involving Malaysia and its neighbors, Singapore and Indonesia. Indeed, if the final outcome of negotiation on maritime dispute failed to reach any settlement or agreement, the concerned parties may resort to judicial method as one of the peaceful means for dispute resolution. Dixon (1996) noted that many states in the past have referred their disputes to ICJ and other arbitration tribunal for peaceful settlement especially

[20] See D.H. Anderson. (1998). 'Strategies for Dispute resolution: Negotiating Joint Agreements' in Blake et al. (eds), *Boundaries and Energy: Problems and Prospects* (Kluwer Law International), pp. 474-475; Extracted from Ong (1999), 'The 1979 and the 1990 Malaysia-Thailand' p. 246.

[21] See Ong. (1999). 'The 1979 and the 1990 Malaysia-Thailand', p. 213.

[22] Similar to the 1989 Timor Gap Treaty, the 1990 Malaysia-Thailand Joint Development Agreement established a very powerful Joint Authority, which assumes the rights and responsibilities of the parties in the described zone of cooperation.

cases involving delimitation of maritime boundaries between adjacent and opposite States.[23]

For Malaysia, the 32-years dispute over the sovereignty of the islands of Sipadan and Ligitan with Indonesia is the first ever case that was referred to ICJ. The significance of the ICJ role in that dispute prompted Nagara (2002) to note that it was "the first time any of the rival territorial claims in archipelagic South-East Asia had been submitted to the ICJ." [24] The dispute over the ownership of the two islands finally ended on 17 December 2002 when the Court awarded the ownership of the two islands to Malaysia.[25] Relevantly, the ruling set a regional precedent for other regional claimant states involving overlapping territorial disputes to mutually agree to a peaceful settlement by the ICJ in the foreseeable future. Indeed, the second territorial dispute case that has been referred to ICJ is the one involving Malaysia and Singapore over the ownership of Pedra Branca/Pulau Batu Puteh, Middle Rocks, and South Ledge. The case is still pending.

There are several common characteristics, which led the two disputes to be referred to ICJ for judicial settlement. Firstly, in both cases, prior to their submission to the ICJ for adjudication, the concerned parties had exhaustively tried to use consultation and negotiation to settle their respective dispute. None of these diplomatic approaches, however, successfully settled the disputes. For example, before the submission of the Sipadan and Ligitan case to ICJ, Malaysia and Indonesia were involved in six Joint Commission Meetings (JCMs) and at least three Special Working Group Meetings (SWGMs).[26] One of the fundamental reasons behind the failure to resolve the disputes through negotiation is due to the fact that the concerned parties were more inclined to treat the dispute as part of a larger package of bilateral issues that need to be resolved comprehensively. Such approach was evident in the negotiations of the Pedra Branca case as not only the agenda of the discussion limited to solving the dispute, it also discussed other outstanding bilateral issues such as water agreement, the Tanjung Pagar, Custom, Immigration and Quarantine Checkpoint (CIQ), the withdrawal of Central Provident Fund (CPF) by Malaysian employees working in Singapore. Indeed, K.S. Nathan (2002) pointed out this approach of settling their outstanding bilateral issues reflect convergence of national interests of the two Causeway neighbors.[27]

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[23] See Martin Dixon. (1990). *Textbook on International Law* (Blackstone: London), p. 214.

[24] See Bunn Nagara. (2002). 'Peaceful Conclusion to a Regional Dispute', *The Star*, December 18.

[25] For further details of the judgement, see The Court finds that sovereignty over the islands of Ligitan and Sipadan belongs to Malaysia (2002, 12 December) *ICJ Press Release 2002/39bis*, Retrieved January 2, 2004, from http://www.lawschool.cornell.edu/library/cijwww/icjwww/ipresscom/ipress2002/ipresscom2002-39_inma_20021217.htm

[26] For further details on JCM and SWGMs, see Kelana and Askandar. (2000). 'Territorial Conflict Management', p. 9-13.

[27] K .S. Nathan. (2002). *Malaysia-Singapore Relations: Retrospect and Prospect*. Paper Presented at the 4th Southeast Asian Conflict Studies Network (SEACSN) Regional Workshop, Held at USM and Shangri-La Hotel, Penang, 15-17 July.

Secondly, in both cases, after the failure of negotiations, the relevant parties mutually agreed to refer their respective cases to the ICJ for settlement through the signing of special agreements namely:

i. Special Agreement for Submission to the International Court of Justice of the Dispute between the Republic of Indonesia and Malaysia concerning Sovereignty over Pulau Ligitan and Pulau Sipadan, signed at Kuala Lumpur on 31 May 1997;
ii. Special Agreement for Submission to the International Court of Justice of the dispute between Malaysia and Singapore Concerning Sovereignty of Pedra Branca/Pulau Batu Putih, Middle Rock and South Ledge, signed in 14th April 1998.

It should be mentioned here that within the context of international law, the above agreements are vital in allowing the concerned parties to grant compulsory jurisdiction to the ICJ. Unlike domestic courts, ICJ does not have compulsory jurisdiction over international legal disputes unless the disputing parties voluntarily agree to submit their case to Court.

The third common characteristic of the cases is that they are all legal dispute, and thus requiring judicial settlement. As the cases are inter-state international dispute and involved legal disputes over the ownership of islands, the interpretation of international law is required to settle the disputes. Therefore, Malaysia and other parties have chosen appropriate dispute settlement procedure by referring their cases to ICJ for judicial settlement. As parties to the 1982 LOSC, Malaysia Indonesia and Singapore are highly committed to settle their differences peacefully in accordance with international law, either through the ICJ or other dispute settlement bodies provided for by the Convention.[28] Indeed, as accorded in Part XV of the 1982 LOSC, ICJ is one the suggested mechanisms for compulsory dispute settlements concerning interpretation and application of the Convention's legal provisions. Moreover, the willingness of Malaysia, Indonesia and Singapore to settle their case though judicial method derived from their shared prevailing feelings of goodwill and friendliness, and spirit of cooperation embodied among these ASEAN founding members. Singapore Foreign Minster, S. Jayakumar in his speech to the Parliament on the state of bilateral relation in 2003 with Malaysia clearly indicated his country willingness to deal with Malaysia's claim over Pedra Branca amicably and in the spirit of goodwill and proceed with ICJ judicial process to peacefully settle their dispute over Pedra Branca[29]

[28] The recent judgment by the International Tribunal for the Law of the Sea (ITTLOS) concerning the dispute over Singapore's reclamation project exemplifies how Malaysia and Singapore willingness to settle their problems concerning maritime issues through legal means. For further readings on the judgment of the case, see K.Y. Pung. (2003) 'Save the Straits', *The Star*, 9 October.

[29] See Annex to the Ministerial Statement by Minister for Foreign Affairs, Prof. S. Jayakumar in Parliament, 25 January 2003.

CONCLUSION

Despite Malaysia's ongoing unresolved maritime territorial dispute with its neighbors, significant progresses have been made by the country to settle other maritime territorial disputes peacefully by means of diplomatic, legal, and other peaceful approaches. Rather than resorting to military force, Malaysia believed the spirit of ASEAN goodwill and neighborly relations among ASEAN members should prevail when settling disputes among them. Any escalation of violent conflict from unresolved maritime territorial dispute among the ASEAN neighbors will cost human life, adversely affect economic growth and diplomatic relationship of the claimant states, but also jeopardize the overall peace and stability in this region.

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